LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
AUG 5 1954
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1954

No. 261

ELIZABETH B. GRANVILLE-SMITH, *Petitioner*

v.

EDWARD GRANVILLE-SMITH, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

ABE FORTAS
1229-19th Street, N. W.
Washington 6, D. C.

GEORGE H. T. DUDLEY
Box 717, Charlotte Amalie
St. Thomas, Virgin Islands
Attorneys for Petitioner

DUDLEY, HOFFMAN & MCGOWAN
Box 717, Charlotte Amalie
St. Thomas, Virgin Islands

MILTON V. FREEMAN
ABE KRASH
ARNOLD, FORTAS & PORTER
1229-19th Street, N. W.
Washington 6, D. C.
Of Counsel

August, 1954

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statute Involved	2
Statement	3
Reasons for Granting the Writ	6
Conclusion	7
Appendix A	8
Appendix B	9
Appendix C	10

TABLE OF AUTHORITIES

CASES:

Alton v. Alton, 207 F. 2d 667 (C.A. 3, 1953), dismissed as moot, 347 U. S. 610 ..... 1 et seq.
Burch v. Burch, 195 F. 2d 799 (C.A. 3, 1952) 4

STATUTES:

28 U.S.C. § 1254 (1) 2

Sections 8, 9 and 9 (a) of the Divorce Law of the Virgin Islands (Act of the Legislative Assembly of the Virgin Islands, approved December 29, 1944, as amended by Act, approved May 29, 1953 (Bill No. 55, 17th Legis. Ass. of the V.I.) 2, 3

Section 17 3

MISCELLANEOUS:

39 Cornell L.Q. 293 (1954) 6
54 Col. L. Rev. 415 (1954) 6
67 Harv. L. Rev. 516 (1954) 6
34 Boston U. L. Rev. 216 (1954) 6
42 Georgetown L. J. 450 (1954) 6
22 George Washington L. Rev. 356 (1954) 6
5 Hastings L. J. 246 (1954) 6
32 Texas L. Rev. 610 (1954) 6
23 U. of Cin. L. Rev. 266 (1954) 6

IN THE

Supreme Court of the United States

October Term, 1954

No.

ELIZABETH R. GRANVILLE-SMITH, *Petitioner*

v.

EDWARD GRANVILLE-SMITH, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

To the Honorable the Chief Justice of the United States and to the Associate Justices of the Supreme Court of the United States:

Comes now the Petitioner, Elizabeth R. Granville-Smith, and prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above-entitled case on July 13, 1954. This petition presents precisely the same question that was before this Court in the October, 1953, Term in No. 531, *Alton* v. *Alton*, dismissed as moot after certiorari had been granted and the case had been orally argued, 347 U.S. 610.

OPINIONS BELOW

The District Court rendered no opinion. Its judgment is annexed hereto as Appendix C. The opinion of the Court of Appeals is not yet reported; it is annexed hereto as

Appendix A. The Court of Appeals sitting *en banc* affirmed the judgment of the District Court, which dismissed the complaint, on the grounds that "This case is the same with regard to all operative facts and principles of law as *Alton* v. *Alton*, 207 F. 2d 667 (C.A. 3, 1953)." The Court of Appeals concluded in a *per curiam* opinion that its decision in *Alton* "must govern this [case]" because "individual members of the Court have not modified their views as set out" in *Alton*.

JURISDICTION

The judgment of the Court of Appeals was entered on July 13, 1954. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Does the due process clause of the Fifth Amendment to the Constitution of the United States prohibit the legislature of the Virgin Islands from making plaintiff's residence within its borders for six weeks prima facie evidence of domicile in a proceeding for divorce?

2. Does the due process clause of the Fifth Amendment to the Constitution of the United States prohibit the legislature of the Virgin Islands from providing that upon proof of six weeks residence of a complaining party in a divorce action where the defendant has been personally served within the district or enters a general appearance, the court shall have jurisdiction of the action without further reference to domicile?

STATUTE INVOLVED

Sections 8, 9 and 9(a) of the Divorce Law of the Virgin Islands[1] read as follows (Section 9(a) is in issue here):

> "Section 8. When a marriage has been solemnized in the district an action may be maintained to declare

---

[1] Act of the Legislative Assembly of the Virgin Islands, approved December 29, 1944, as amended by Act, approved May 29, 1953 (Bill No. 55, 17th Legis. Ass. of the V.I.)

it void if the plaintiff is an inhabitant of the district at the commencement of the action. If the marriage has not been solemnized in the district, such action can only be maintained when the plaintiff has been an inhabitant thereof for six weeks prior to the commencement of the action.

"Section 9. In an action for the dissolution of the marriage contract or for a legal separation the plaintiff therein must be an inhabitant of the district at the commencement of the action and for six weeks prior thereto, which residence shall be sufficient to give the Court jurisdiction without regard to the place where the marriage was solemnized or the cause of action arose.

"(a) Notwithstanding the provisions of sections 8 and 9 hereof, if the plaintiff is within the district at the time of the filing of the complaint and has been continuously for six weeks immediately prior thereto, this shall be prima facie evidence of domicile, and where the defendant has been personally served within the district, or enters a general appearance in the action, then the Court shall have jurisdiction of the action and of the parties thereto without further reference to domicile or to the place where the marriage was solemnized or the cause of action arose."

Section 17 thereof reads as follows:

"Should any section of this law or part thereof be declared invalid by a Court of competent jurisdiction, said declaration shall not invalidate the remainder of this law."

STATEMENT

Petitioner brought this suit for divorce in the District Court of the Virgin Islands at Charlotte Amalie, St. Thomas, on March 16, 1953 (R. 1A).* Jurisdiction over

---

* Record citations are to the "Appendix on Behalf of Appellant" in the Court below, a copy of which has been certified to this Court.

divorce actions is vested in the District Court by 48 U.S.C. § 1406(4).

Petitioner's verified complaint alleged that she was a resident and inhabitant of the Virgin Islands and had been so for more than six weeks prior to the commencement of the action; that Respondent was not a resident of the Virgin Islands and that his last known address was Scarsdale, New York; that the parties were married on September 28, 1929, at New York City, New York; and that there are no children of the marriage under twenty-one years of age (R. 1A). This was followed by a detailed statement of facts on the basis of which a "state of irreconcilable incompatibility"[2] was alleged to exist between the parties. The complaint prayed for a decree of absolute divorce. It did not ask for any relief relating to alimony or property.

Respondent entered an appearance and waived service of summons (R. 9A). He filed an answer in which he alleged lack of sufficient knowledge and information upon which to form a belief as to Plaintiff's allegation that she was a resident and inhabitant of the Virgin Islands and had been so for more than six weeks (*Ibid*). He admitted the allegations in the complaint concerning his residence, the date and place of the marriage, and the absence of children under twenty-one (*Ibid*). He denied all of the other allegations. Respondent simultaneously filed a "Waiver and Consent" in which he stated that he had no objection to an immediate hearing and he consented to "the making and entering of such findings of fact and conclusions of law and decree as to the Court may seem just and reasonable" (R. 11A).

Testimony was thereafter taken before a Commissioner (R. 14A). Petitioner testified that she had become a resi-

---

[2] "Incompatibility of temperament" constitutes ground for divorce in the Virgin Islands. Act of the Legislative Assembly of the Virgin Islands, approved December 29, 1944, § 7(8). See *Burch* v. *Burch*, 195 F. 2d 799, 806-807 (C.A. 3, 1952).

dent and inhabitant of the Virgin Islands on February 1, 1953 (*Ibid*). Testimony was also taken in support of other allegations in the complaint. Both parties were represented by counsel. No testimony was offered in behalf of Respondent.

On March 20, 1953, the Commissioner filed findings of fact which included, among others, a finding that Plaintiff was a resident and inhabitant of the Virgin Islands and had been so for more than six weeks prior to commencement of the action (R. 16A). He concluded as a matter of law that a "state of incompatibility of temperament exists between the parties which entitles the Plaintiff to a decree of divorce absolute" (R. 17A).

No action having been taken by the Court, counsel for Petitioner moved on June 21, 1954, to confirm the Commissioner's report (R. 20A). At a hearing on the motion, the Court inquired of counsel of Petitioner "whether you have any more evidence to offer on the question of domicile" (R. 22A). Petitioner's counsel said he had none, and directed the attention of the Court to Section 9(a) of the Virgin Island divorce law, p. 3, *supra*. The Court ruled that Section 9(a) was not "sufficient to confer jurisdiction on this Court to grant this divorce" (R. 23A). On June 21, 1954, the Court entered an order (annexed hereto as Appendix C), dismissing the complaint on the sole ground that the Court lacked jurisdiction. The Court relied on the opinion it had rendered in *Alton* v. *Alton* on June 3, 1953.[3]

On appeal, the Court of Appeals considered the matter *en banc*. It affirmed the judgment of the District Court *per curiam* on the basis of its opinion in *Alton* v. *Alton*, 207 F. 2d 667 (C.A. 3, 1953). In *Alton* v. *Alton*, the Court of Appeals concluded by a vote of 4 to 3 that (a) the first provision in Section 9(a) creating a rebuttable presump-

[3] The opinion of the District Court in *Alton* v. *Alton* is not reported. It is reprinted in the Transcript of Record filed with this Court in *Alton* v. *Alton* at pp. 12-26.

tion of domicile on the basis of six weeks presence was unconstitutional because there was no "rational connection" between six weeks presence and domicile, and that (b) the second provision in the statute, providing that where the Defendant is before the Court the case shall proceed without further reference to domicile, violated the due process clause of the Fifth Amendment. The Court of Appeals concluded here that its decision in *Alton* v. *Alton* "must govern this [case]" since "individual members of the Court have not codified their views as set out in the opinions in that case."

REASONS FOR GRANTING THE WRIT

This petition presents precisely the same issues raised but not resolved at the October, 1953, Term by No. 531, *Alton* v. *Alton*, dismissed as moot after certiorari had been granted and the case had been orally argued, 347 U.S. 610. As the Court of Appeals put it, "this case is the same with regard to all operative facts and principles of law as *Alton* v. *Alton*." We accordingly incorporate herewith by reference the "Petition for a Writ of Certiorari" and the "Brief for the Petitioner" filed in *Alton* v. *Alton*.

In reaffirming their decisions in *Alton* v. *Alton*, the Courts below have decided basic questions concerning the constitutional power of state and territorial legislatures to regulate the mode of proof and jurisdictional standards in divorce litigation, a domain of law traditionally confided to the states. Those questions were deemed important by this Court when certiorari was granted last term in *Alton* v. *Alton*. They are still important.[4] The very same consid-

[4] The importance of the underlying issues is reflected by the widespread discussion in the professional journals precipitated by *Alton* v. *Alton*. See comments and notes 39 Cornell L.Q. 293 (1954); 54 Col. L. Rev. 415 (1954); 67 Harv. L. Rev. 516 (1954); 34 Boston U.L. Rev. 216 (1954); 42 Georgetown L. J. 450 (1954); 22 George Washington L. Rev. 356 (1954); 5 Hastings L. J. 246 (1954); 32 Texas L. Rev. 610 (1954); 23 U. of Cin. L. Rev. 266 (1954).

erations which prompted the Court to issue certiorari in *Alton* warrant grant of the writ here.

CONCLUSION

For the reasons stated, this petition for a writ of certiorari should be granted.

The issues presented have already been canvassed in the briefs and oral argument in *Alton* v. *Alton*. In order to avoid unnecessarily burdening the Court and to facilitate an early disposition of the cause,[5] Petitioner is willing to submit her case for decision on the merits on the basis of the briefs and argument in *Alton*.

Respectfully submitted,

ABE FORTAS
1229-19th Street, N. W.
Washington 6, D. C.

GEORGE H. T. DUDLEY
Box 717, Charlotte Amalie
St. Thomas, Virgin Islands
Attorneys for Petitioner

DUDLEY, HOFFMAN & MCGOWAN
Box 717, Charlotte Amalie
St. Thomas, Virgin Islands

MILTON V. FREEMAN
ABE KRASH
ARNOLD, FORTAS & PORTER
1229-19th Street, N. W.
Washington 6, D. C.
Of Counsel

August, 1954

[5] The Clerk of the Virgin Islands District Court reported to the Administrator of the Federal Courts on April 2, 1954, that as of March 31, 1954, decision in forty-eight cases had been held in abeyance pending decision of the issue presented by *Alton* v. *Alton*. Since that report was submitted additional cases have been filed and are now waiting disposition of this appeal by this Court.

APPENDIX A

Opinion of the Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 11,354

ELIZABETH R. GRANVILLE-SMITH, *Appellant*

v.

EDWARD GRANVILLE-SMITH, *Appellee*

Appeal From the District Court of the Virgin Islands, Division of St. Thomas and St. John

Submitted June 25, 1954

Before Biggs, Chief Judge, and Maris, Goodrich, McLaughlin, Kalodner, Staley and Hastie, Circuit Judges

Opinion of the Court

(Filed July 13, 1954)

Per Curiam

This case is the same with regard to all operative facts and principles of law as Alton v. Alton, 207 F. 2d 667 (C.A. 3, 1953), cert. granted, 347 U.S. 911 (1954); proceedings dismissed because moot, June 1, 1954. That decision must govern this. While individual members of the Court have not modified their views as set out in the opinions in that case, all recognize the authority of a decision rendered after due consideration by the Court en banc.

The judgment of the district court will be affirmed.

A true Copy:

Teste:
Clerk of the United States Court of Appeals for the Third Circuit.

APPENDIX B

Judgment of the Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 11,354

ELIZABETH R. GRANVILLE-SMITH, *Appellant*

v.

EDWARD GRANVILLE-SMITH, *Appellee*

Present: Biggs, Chief Judge, and Maris, Goodrich, McLaughlin, Kalodner, Staley and Hastie, Circuit Judges.

Judgment

This cause came on to be heard on the record from the District Court of the Virgin Islands, Division of St. Thomas and St. John, and was submitted on brief.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed, with costs.

Attest:

HARRIET G. HUMPHRYS
Deputy Clerk

July 13, 1954

RECEIVED & FILED

JUL 13, 1954

IDA O. CRESKOFF
Clerk

APPENDIX C

Judgment of the District Court

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN AT CHARLOTTE AMALIE

CIVIL NO. 119—1953

ACTION FOR DIVORCE

ELIZABETH R. GRANVILLE-SMITH, *Plaintiff*,

vs.

EDWARD GRANVILLE-SMITH, *Defendant*.

Order

This matter came on for hearing June 21, 1954, on the Motion of Dudley, Hoffman & McGowan, substituted attorneys for plaintiff, requesting confirmation of Findings of Fact and Conclusions of Law heretofore filed herein by George A. Mena, District Court Commissioner, the 20th day of March, 1953, recommending the granting of a decree of divorce to plaintiff from defendant, on the ground of Incompatibility of Temperament.

Plaintiff appeared by her attorneys, Dudley, Hoffman & McGowan (Louis Hoffman, Esq., of counsel).

Defendant appeared by his attorney, Warren H. Young, Esq.

After hearing the argument of counsel on the Motion, the Court being satisfied in the premises, and on the basis of opinion heretofore rendered June 13, 1953 in the matter of *Alton* v. *Alton*, Civil No. 145-1953, it is hereby

ORDERED, that said Motion be and the same is hereby denied, and the Complaint herein dismissed for lack of jurisdiction over the plaintiff herein.

In Testimony Whereof, I have hereunto set my hand and caused the seal of the Court to be affixed this 21st day of June, 1954.

(s) Herman E. Moore
HERMAN E. MOORE
Judge

Attest:

(s) GEORGE A. MENA
Clerk